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2 sections, I think, that gave me the -- I mean, I
3 would have looked at the listing of the trust, and
4 the suits to see -- because that's part of the
5 scope of the claims.

6 MR. CARNEY: To the extent we have
7 any left, I will reserve my time, but that's
8 all I have for now.

9 (Recess taken.)

10 EXAMINATION BY

11 MR. SHORE:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. I'm Chris Shore from White & Case
15 on behalf of the Ad Hoc Group of Junior Secured
16 Notes.

17 You testified to a May 31 meeting.
18 Prior to that date had anybody talked to you about
19 preparing a Declaration in support of a FGIC
20 settlement?

21 A. I may have had a brief call or an
22 e-mail just saying we'd like to meet with you.
23 There is a FGIC settlement, and we'd like to have
24 a discussion with you to see if you could offer
25 any opinions to assist in the 9019, but it would

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2 have been no more than a brief alerting me on what
3 one of the items of the meeting was, and
4 scheduling it.

5 Q. And where did that meeting take
6 place?

7 A. At the offices of Morrison &
8 Foerster.

9 Q. And who was there?

10 A. I remember Alex. Lawrence was
11 there. Rob Baehr was there. Jim Newton. There
12 was one other associate. I was there with my
13 partner, Jen Battle.

14 Q. I'm sorry. Her name?

15 A. Jen Battle, Jennifer Battle.

16 Q. And how long did the meeting take
17 place?

18 A. That portion of the discussion that
19 related to FGIC was fairly brief. I would say 15,
20 20 minutes.

21 Q. What did anybody tell you about
22 what the assignment was?

23 MR. KERR: And just so we're clear,
24 Chris, as he's testified, there were other
25 aspects. So, this is just the aspect of the

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2 FGIC settlement. You're free to testify about
3 that. That's fine.

4 Q. What did anybody tell you about
5 what the assignment was?

6 A. I had already offered a Declaration
7 that related to the RMBS Trust Settlement. So, I
8 had an expectation going in that they would want
9 me to look at uncertainties, risks associated with
10 those claims that were being resolved in the
11 settlement, and I had an expectation that they
12 would ask me to offer some opinions related to the
13 costs associated with it.

14 So, going in I had the expectation
15 that they wanted me to look at the settlement,
16 look at the claims that were being released, and
17 advise them as to whether I could offer some
18 opinions related to that.

19 What I didn't know is whether or
20 not they wanted me to offer an opinion on range of
21 reasonableness or things like that, and in the
22 best interest. And ultimately I did not include
23 that in the report. I certainly have some views
24 on it.

25 Q. Did they ask you to provide opinion

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2 testimony on range of reasonableness?

3 A. No.

4 Q. And what about best interests?

5 A. No. They asked me to offer the
6 opinions I could offer on the matters that I
7 identified.

8 Q. And did they tell you anything else
9 at that meeting about what the scope of your
10 assignment was?

11 A. No, I don't think they ever really
12 told me what the scope of the assignment was. I
13 think we identified the issues that they felt
14 opinion testimony would be helpful on in the
15 context of the 9019, and I defined the scope of
16 what I was going to do from that point going
17 forward.

18 Q. And did they tell you what the
19 timing was for the assignment?

20 A. I seem to recall under the
21 Settlement Agreement there was a need for a
22 filing, June 7th.

23 Q. And did you express any concerns at
24 that meeting with respect to whether you would
25 have enough time to form your independent opinions

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2 Settlement Agreement?

3 A. I'm not aware of that.

4 Q. Have you or anyone at your firm
5 represented trusts in connection with RMBS
6 litigation?

7 A. I don't believe so.

8 Q. Any monoline insurers?

9 A. No.

10 Q. Any security holders of any RMBS
11 trusts?

12 A. No.

13 Q. Where are you licensed to practice
14 law?

15 A. Licensed in the state of Ohio in
16 all courts and in a number of federal courts
17 around the country.

18 Q. Do you understand that Ohio law
19 governs any of the claims that have been asserted
20 by FGIC or the trusts that are being resolved with
21 the FGIC Settlement Agreement?

22 A. There could be some Ohio law
23 issues, as I identified in my declaration, with
24 respect to loans and whether or not foreclosed
25 loans are loans that could be subject to

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2 repurchase. That was one specific thing I looked
3 at that could be implicated. But it's principally
4 New York law in terms of the governing documents
5 and the claims and Minnesota law, I think, has
6 been involved.

7 Q. And what about any kind of fraud
8 claims or others that are addressed in footnote 3
9 to Lipps No. 1?

10 A. Well, it could be. There could be
11 other law that's applicable under the conflict of
12 law principles.

13 Q. But you haven't done any analysis
14 as to which law would apply to the claims that
15 you're testifying to in connection with Lipps No.
16 1?

17 MR. KERR: Objection.

18 A. No, I think -- well, certainly with
19 respect to the FGIC claims, I think it is New York
20 law.

21 Q. Okay. And are you aware of whether
22 there are any New York licensed attorneys who
23 would be qualified to provide opinions with
24 respect to claims under New York law that are
25 discussed in Lipps No. 1?

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2 A. I have.

3 Q. And what cases were those?

4 A. When I was at Jones Day, Jones Day
5 was in the Federated bankruptcy down in
6 Cincinnati, and I was one of the litigators that
7 was handling adversary proceedings to the extent
8 they needed litigation help. I tried a case
9 against Justice on the -- whether takeover
10 expenses needed to be capitalized or whether they
11 could be expensed as ordinary necessary business
12 expenses, and that was important to get the
13 expense in order to restructure the company.

14 I've also been involved in some
15 bankruptcies related, specifically, for example,
16 to GMAC. I think when it started it was GMAC.
17 But it was related to some odometer rollbacks by
18 one of the lessees on some commercial leases, and
19 that company filed bankruptcy, and we had to
20 proceed on some adversary proceedings associated
21 with that. And I know I've been in bankruptcy
22 court on adversary proceedings on a few other
23 cases.

24 Q. Have you ever appeared in a
25 bankruptcy court in connection with RMBS claims?

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2 MR. KERR: Other than --

3 A. Just in the context of my role as
4 special counsel here.

5 Q. I want to focus now just on the
6 claims that are being allowed at GMAC Mortgage and
7 at RFC. I asked you before whether you were asked
8 to opine on the range of reasonableness.

9 Did anybody at MoFo or at the
10 Debtors ask you informally whether you had a view
11 as to whether the claims amounts set forth in the
12 FGIC Settlement Agreement were in the zone of
13 reasonableness as you understood it?

14 MR. KERR: Objection.

15 A. Not that I recall.

16 Q. And did you volunteer in connection
17 with your assignment, your views with respect to
18 whether or not the claims that were allowed fell
19 within some zone of reasonableness?

20 A. With respect to FGIC, I wouldn't
21 know.

22 Q. You didn't comment at any time as
23 special counsel as to whether you thought the
24 claims were too high, too low, just right?

25 MR. KERR: If you're asking him in

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2 the context in his role as an expert --

3 MR. SHORE: Let me rephrase the
4 question.

5 Q. You were special counsel with
6 respect to the FGIC claims prior to the
7 settlement. Right?

8 A. In my role as special counsel for
9 the Debtors, I did have an occasion to look at the
10 and consult on the FGIC claims as well as the
11 trustee claims associated with FGIC wrapped trust.

12 Q. Did you form any views as to what
13 the appropriate level of those claims were? Yes
14 or no.

15 MR. KERR: Objection.

16 A. No.

17 Q. Well, you said before you had some
18 views as to -- I think you testified before that
19 you had some views with respect to whether the
20 allowed claims fall within the range of
21 reasonableness.

22 A. But your question you just asked me
23 was bracketed in a different time period.

24 Q. So as you sit here today do you
25 have views?

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2 A. The amount of the allowed claim
3 does fall within the range of reasonableness and
4 is in the best interest of the state to resolve.

5 Q. But that's not an opinion you
6 expressed in Lipps No. 1?

7 A. I was not asked to put that into a
8 declaration and provide it to the Court.

9 Q. And so we're clear, whether you
10 were asked or not, those views are not expressed
11 in Lipps No. 1?

12 A. I think the opinions that you just
13 asked me about that I offered you are not
14 contained within my declaration, which I believe
15 is marked as Lipps 1.

16 Q. And so we're clear, as part of your
17 responsibilities in connection with fulfilling
18 your assignment for the preparation of Lipps No.
19 1, you did not express those views to the company,
20 that is the Debtors?

21 A. What views?

22 Q. The views that you said that they
23 fall within the range of reasonableness.

24 A. No, I did not express those views
25 to the company.

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2 Q. Do you know what Section 501B of
3 the bankruptcy code is?

4 A. I've been advised of what it is.

5 Q. And when were you first advised
6 with respect to Section 501B is?

7 A. Assuming I haven't ever encountered
8 it in some of my other experiences, I know and
9 became fairly familiar with it when AIG filed its
10 subordination motion. I think it wound up being
11 taken off docket.

12 Q. And what do you understand Section
13 501B in the bankruptcy code to address?

14 MR. KERR: Objection.

15 A. I think it addresses subordination
16 in association with sales of securities.

17 Q. And do you understand it also to
18 apply to purchase of securities and rescission of
19 any purchase or sale of securities?

20 A. I'd have to look at it to know
21 whether that -- what you just said would be
22 accurate.

23 Q. What, if any, portion of your
24 report takes into consideration -- of Lipps No. 1
25 takes into consideration the application of

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2 Section 510B of the bankruptcy code to any of the
3 claims asserted against GMAC M or RFC that are
4 resolved in the FGIC Settlement Agreement?

5 A. I did not analyze subordination
6 under 510B for purposes of offering my opinions.

7 Q. Did you analyze any affirmative
8 defenses that any of the Debtors might have by
9 virtue of being Debtors that could be asserted in
10 response to claims that are being settled in the
11 FGIC Settlement Agreement?

12 MR. KERR: Objection.

13 A. Either restate that or read it
14 back.

15 Q. You set forth a number of defenses
16 in Lipps No. 1.

17 A. Right.

18 Q. Did you consider at all whether
19 GMAC M or RFC had any other defenses by virtue of
20 there being Debtors in pending bankruptcy cases?

21 A. I was aware of that by virtue of
22 being in special counsel -- in my special counsel
23 role, and I certainly would know that adds
24 complexity and perhaps even uncertainty -- well, I
25 think it probably does add uncertainty as to how